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DEC 26 1951

Acting Chief, Finance Division

Office of General Counsel

Consultants -- Travel and Compensation

Re: Your Memorandum to this Office dated 3 December 1951

1. We have undertaken to answer in a general manner the questions submitted in the above memorandum. You will understand that this will not cover the entire field of consultant relationships and future problems will have to be dealt with on the basis of individual facts.

A. Status of Contract Consultants. Some of the contracts presently in force do not specifically state that the individual is a contract consultant though the terms of the contract may make it appear that he was intended to be a consultant. Before 10 August 1951 this term was not used in all contracts because [redacted] of the Confidential Funds Regulations was not in effect. You are justified in normally treating those hired at a daily rate as consultants; however, what the particular individual is depends upon the way he is being used and that use is best known by operational personnel.

Specifically, the answer to your question is "yes." If you are unable to ascertain the individual's status from the contract, consult the special contracting officer.

B. Travel Time of Consultants. You should get a certification from the operating officer which used the man, stating how many hours on each day they used him. If they caused him to be held over to the third day, he should be fractionally paid for that day. 28 Comp. Gen. 502 states that where consultants are compensated on a "when actually employed basis," he is entitled to compensation from the moment he departs from his home or regular place of business to perform duties and such compensation continues for the period usually required for him to return to his home or place of business, by the mode of transportation selected upon the completion of his duties with the Board at the place of sitting."

C. Compensation for Claims While Outside the United States.

(1) We assume you are referring to [redacted] rather than 14.2 of the CFR's. You will note that the effective date of [redacted] is 10 August 1951. The travel referred to was performed from March to May 1951. For future problems of this nature, the answer to your question is found in [redacted]. It states, "exceptions will require appropriate justification" to the special contracting officer.

(2) This point is answered immediately above.

SECRET

SECRET

SECURITY INFORMATION

-2-

D. Compensation for Saturdays, Sundays and Holidays.

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(1) If [REDACTED] contract provided that he was to be paid \$35.00 a day and he spent fifty-six days traveling or performing other assigned duties at this Agency's request, it would appear that he is entitled to reimbursement for those days regardless of which day of the week is involved. Questions of this nature should be resolved by authorizing officers after consultation with the operational office involved. If they cannot be, the Special Contracting Officer should be consulted.

(2) The question seems to be answered above.

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E. Compensation for Continuous Service of More than One Month.
As you have indicated, [REDACTED] contract does not state that he is a consultant. A review of the contract would indicate that he was not necessarily an intermittent consultant within the meaning of the present regulations. The circumscribing provisions of [REDACTED] were not effective until 12 June 1951 and 10 August 1951 respectively. [REDACTED] contract was signed before either of those dates, his travel referred to was completed before either date and there is no apparent reason why these provisions should apply retroactively. Consequently, depending upon the nature of his duties he may be deemed to have been a contract agent or a temporary consultant. The latter specie is one recognized by general law and governmental usage if not by the present regulations of this Agency. If a factual determination indicates that by the nature of his duties he was a temporary consultant rather than a contract agent, the special contracting officer may determine his first duty station and travel allowances are allowable accordingly.

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F. Certifications Required by Consultants.

(1) The problem raised here appears to be administrative, rather than requiring a legal determination. Approval of the operating office should be sufficient certification and the evidence they require in proof of actual work done is a policy question. An agent, as well as a consultant, may go fishing and later state that he worked that day. The operating office must deal with these problems and is internally responsible for authenticating claims of this nature for services rendered.

(2) We see no reason why more certification is required for these days than for others.

G. Maximum Compensation Allowable.

(1) Without required approval, Regulation [REDACTED] restricts the amount of compensation payable in a month as well as a day.

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SECRET

SECURITY INFORMATION

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SECRET

-3-

(2) The terms of the contract may define a maximum limit.

(3) Policy may dictate certain limits, i.e., that a consultant paid on a fee, rather than a time basis, may receive only one such fee a day.

(4) If your question was not directed at the above considerations, please give us a statement of facts to consider.

2. We trust that some of the above will assist you in your quandary. The employment of consultants should add flexibility to an organization. Unfortunately, the present regulations in this area will now limit the uses to which consultants may be put. Time may indicate that operational necessities require amendments.

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